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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

REGINALD L. WHITE,

Defendant and Appellant.

D075315

(Super. Ct. No. SCD222750)

APPEAL from a judgment of the Superior Court of San Diego County, Charles G. Rogers, Judge. Affirmed, sentence vacated, and the case remanded with directions.

Marilee Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel, Melissa Mandel and Adrian Contreras, Deputy Attorneys General, for Plaintiff and Respondent.

In 2010, Reginald L. White was convicted by a jury of violations of Health and Safety Code sections 11378, count 7; 11379, subdivision (a), count 8; and 11377, subdivision (a), count 9. A mistrial was declared on several remaining charges.

In 2011, White resolved the remaining charges by pleading guilty to two counts of assault with a firearm (Pen. Code,¹ § 245, subd. (a)(2)). White admitted he committed the offenses for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)) and admitted inflicting great bodily injury (§ 12022.7, subd. (a)) as well as admitting the personal use of a firearm (§ 12022.5, subd. (a)). The parties stipulated to a 17-year term in prison. The court imposed the stipulated sentence.

In 2018, at the request of the Department of Corrections and Rehabilitation, the court recalled the sentence under section 1170. The court resentenced White to a determinate term of 15 years in prison. White filed a notice of appeal and obtained a certificate of probable cause. (§ 1237.5.)

White appeals contending the case should be remanded to the trial court to exercise its discretion under Senate Bill No. 620 to dismiss the firearm enhancement in the furtherance of justice. The People agree the case must be remanded to the trial court to permit White to move to dismiss the enhancement.

White also contends the trial court should have recalculated his custody credits at the time of the 2018 resentencing. Once again, the People agree.

¹ All further statutory references are to the Penal Code unless otherwise specified.

We agree with both parties, the case must be remanded so the court can exercise its discretion and also properly recalculate custody credits as of the time of the 2018 resentencing and we will remand the case with directions.²

DISCUSSION

During the December 2018 resentencing hearing, White advised the court of the newly enacted statute in Senate Bill No. 620, which authorized the trial court, in a resentencing proceeding to dismiss the firearm enhancement. The statute was effective January 1, 2018. The court determined the statute did not apply to White because his conviction had long been final.

Defense counsel also asked the court to recalculate White's custody credits as of the date of the resentencing. The court did not recalculate the credits, thus the judgment reflects credits as of 2011.

The parties agree the court misunderstood its sentencing discretion and its responsibility to recalculate the custody credits. We agree and will remand for resentencing.

A. Senate Bill No. 620

When White was originally sentenced in 2011, the trial court did not have discretion to dismiss such enhancement in the furtherance of justice. (*People v. Herrera* (1998) 67 Cal.App.4th 987, 989.) Section 12022.5, subdivision (c), now provides: "The court may, in the interest of justice pursuant to section 1385 and at the time of sentencing,

² The facts of the underlying offenses are not relevant to the resolution of this appeal. We will omit the traditional statement of facts.

strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to other law."

It is clear the trial court misunderstood its sentencing discretion. While White's conviction was final for some years, he was before the court in an authorized resentencing hearing. Therefore, remand is appropriate to permit the court to exercise its discretion as authorized by Senate Bill No. 620. We express no opinion as to how the court should rule on any motion to dismiss the firearm enhancement.

B. Custody Credits

In December 2018, White was resentenced pursuant to section 1170. At that time the judgment should have been modified to reflect White's actual custody credits as of the date of the resentencing. (*People v. Buckhalter* (2001) 26 Cal.4th 20, 23, 37; § 2900.1.)

On remand, the trial court is directed to recalculate White's actual custody credits and to amend the abstract of judgment accordingly.

DISPOSITION

The sentence is vacated, and the matter is remanded to the trial court with direction to permit White to bring a motion to dismiss the firearm enhancement and to exercise its discretion to rule on the motion. Upon completion of the resentencing process the trial court is directed to recalculate White's actual custody credits and to amend the abstract to reflect the sentence and appropriate credits. The court should forward an amended abstract to the Department of Corrections and Rehabilitation. In all other respects the judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

DATO, J.

GUERRERO, J.